IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6008 OF 2006

Shri D.P. Rathod ....Petitioner.

V/s

1. State of Maharashtra
and Ors. ....Respondents.

Shri D.B. Savant for the Petitioner.

Shri M.D. Lonkar for the Respondent No.3.

CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.

DATE : 3rd October, 2006

P.C.:

1. Heard.

2. Rule. By consent, Rule is made returnable forthwith.

3. Though the impugned order is sought to be challenged on various grounds, it is not necessary to consider those grounds and suffice to refer to only one ground for disposal of the Petition.

4. It is the contention of the Petitioner that proceedings before the Tribunal were disposed of by the Hon'ble Member of the Tribunal without giving an opportunity to the Petitioner of being heard in the matter in the sense that no notice at all was issued to the Petitioner before disposal of the matter.

5. It is not in dispute that the Maharashtra Administrative Tribunal, before whom the Original Application No.328 of 2006 was filed by Respondent No.3 herein, did not issue any notice to the Petitioner in the said proceedings in terms of Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988. It is further undisputed fact that on the very first day of hearing, the matter was disposed of finally. It is also undisputed fact that a private notice was issued to the Petitioner by the advocate for Respondent No.3 herein about the said application before the Tribunal and the matter having been fixed for hearing on 27th July 2006 but the said notice was received by the Petitioner only on 26th July, 2006. By the

time advocate for the Petitioner reached the Tribunal, the hearing of the matter had already been concluded. Undoubtedly, the Petitioner could have filed an appropriate application bringing this fact to the notice of the Tribunal and asking for an opportunity of being heard. However, since the Tribunal itself having failed to comply with its statutory obligation in terms of Rule 11 of the said Rules, no amount of reluctance on the part of the Petitioner in filing the application before the Tribunal bringing the above fact to the notice of the Tribunal can enure to the benefit of Respondent No.3 nor it can validate the impugned order which has been undisputedly passed without following even the basic principles of natural justice. When the law prevalent provides that the Tribunal has to issue a notice before disposing of the matter, merely because the advocate for the party had issued notice about hearing, that itself will not be sufficient compliance of the Tribunal's obligation under Rule 11 of the said Rules. Since, in the matter in had, the Tribunal having proceeded to dispose of the matter without complying with its obligation under Rule 11, resulting in failure to give fair opportunity to the Petitioner of being heard in the matter, the impugned order cannot be sustained and is liable to be set aside and is hereby set aside and the matter is remanded to the Tribunal to hear the Original Application No. 328 of

2006 afresh, after giving opportunity of being heard to both the parties in the matter.

6. Parties may appear before the Maharashtra Administrative Tribunal on 06/11/2006 at 11.00 A.M for further proceedings in the matter.

7. Rule is made absolute in the above terms.

(R.M.S. KHANDEPARKAR, J.)

(V. M. KANADE, J.)